



# City of Hermosa Beach

1315 Valley Drive, Hermosa Beach, CA 90254  
310.318-0203 - Fax 310.372-6186

Email: [recordsrequest@hermosabch.org](mailto:recordsrequest@hermosabch.org)



PRR-19-00091

Received By: Taneshia Hudson  
Referred To: P.D.  
Date Referred: 08/07/19

## Public Records Request

The City of Hermosa Beach encourages public participation in the governing process and provides reasonable accessibility to all public records except those documents which are exempt from disclosure by express provisions of law or considered confidential or privileged under the law. The City is under no obligation to respond to requests which are not focused or specific. The City may withhold documents which are exempt from disclosure under state or federal law, including the attorney-client privilege or any other applicable privilege. The City, in accordance with Government Code Section 6253(b), has ten (10) days to respond to any request for public documents by indicating whether or not the documents exist and will be made available. Actual production of the documents may take somewhat longer depending upon their ease of availability and staff workload. To assist us in providing a timely response to your request, please fill out the form below and indicate the specific record/document you wish to review.

<b>Name (please print):</b> Matt McCool		<b>Email:</b> mccool.matt@gmail.com
<b>Address:</b> Will be made public on Aug 13th.		<b>Phone:</b> 310-486-9696
<b>City:</b> Hermosa Beach		<b>Fax:</b> n/a

### Record or Document Requested:

To assist the City with your request, please identify each requested record/document separately. Please be as specific as possible. Non specific inquiries may cause responses to be delayed or may prove to be burdensome and therefore the City may not be able to respond. (Additional sheets may be used) **Submit all requests to the City Clerk's Office.**

I am respectfully requesting the record that Thomas Powers reported the 3-14-2014 incident to the police. See attached court document, and highlighted section on page 3. This document was provided to me by our assistant city attorney, Ms. Jane Abzug.

Photocopies are \$0.20 per page (Mailing fee, if applicable is \$3.00 plus postage). Fees must be paid before records are released.

I agree to pay all applicable fees and charges per the City Council Resolution of Fees for any copies I request of the above mentioned document. *Accepted method of payment:* Cash or check. Credit card accepted in person only.

MCCOOL.MATTHEW  
.TODD.1280758457

Digitally signed by  
MCCOOL.MATTHEW.TODD.1280758457  
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,  
ou=USN, cn=MCCOOL.MATTHEW.TODD.1280758457  
Date: 2019.08.07 08:36:30 -0700

7 AUG 2019

Signature

Date

### For Departmental Use Only:

#### Action Requested:

☐ Review Only  
☐ Copies Requested

#### Action Taken:

☐ Document Reviewed  
☐ Copies Provided  
☐ Refusal/Reason

By

Date

☐ Non-Existent Document  
☐ Other (Please Explain)

### For City Clerk's Use Only:

Date Requestor Notified \_\_\_\_\_ Notified By: \_\_\_\_\_ Date Picked Up or Mailed \_\_\_\_\_

ORIGINAL

1 EBERHARDT | VILLANUEVA LLP  
2 J. Nigel Villanueva (SBN 208306)  
220 South Pacific Coast Highway, Suite 106  
Redondo Beach, California 90277  
3 Tel: (310) 318-0018 | Fax: (310) 318-0005  
4 Email: Nigel@evlawoffice.com

5 Attorney for Defendant Thomas Joseph Powers

FILED  
LOS ANGELES SUPERIOR COURT

NOV 17 2014

Clerk

Dy A. Sanders, Deputy

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF LOS ANGELES  
9 TORRANCE COURTHOUSE

10 PEOPLE OF THE STATE OF  
11 CALIFORNIA,

12 Plaintiff,

14 v.

15 THOMAS JOSEPH POWERS,

16 Defendant.

Case No. 454 08400-01.

17 MOTION IN OPPOSITION TO  
18 CRIMINAL PROTECTIVE ORDER

Date: November 17, 2014  
Time: 8:30am  
Division : 2

19 Defendant submits the following points and authorities in support of MOTION IN  
20 OPPOSITION TO CRIMINAL PROTECTIVE ORDER. Notice of the prosecution's  
21 request for a criminal protective order was provided November 17, 2014. The defense  
22 filed and served their opposition on November 17, 2014.

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MOTION IN OPPOSITION TO CRIMINAL PROTECTIVE ORDER  
PEOPLE OF THE STATE OF CALIFORNIA v THOMAS JOSEPHY POWERS

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CASE SUMMARY

On or about March 15, 2014 [hereinafter "THOMAS POWERS"] in alleged to have been in physical altercation with alleged victim [hereinafter "MATTHEW McCOOL"].

On or about September 30, 2014 THOMAS POWERS was mailed NOTICE REGARDING ARRAIGNMENT DATE for November 17, 2014 at 8:30am at Southwest Superior Court for misdemeanor charges of "242 P.C. Battery" [See Attachment 1]. The City of Hermosa Beach did not provide notice in said mailer of their intention to filed a criminal protective order.

On November 11, 2014 the prosecutor requested a criminal protective order be issue and served upon THOMAS POWERS pursuant to Penal Code Section 136.2.

Defense Counsel objects to the issuance of a protective order.

First, objection is based on this not being a case of domestic violence. Second, THOMAS POWERS was not provided "notice" of the motion. Third, the Court lacks "good cause" to issue a protective order, as there is absolutely no evidence THOMAS POWERS "attempted to intimidate or dissuade a victim or witness" from testifying. Fourth, there is no evidence THOMAS POWERS is "reasonably likely" to dissuade a victim or witness from testifying.

POINTS AND AUTHORITIES

I

AT A MINIMUM A DEFENDANT  
IS ENTITLED TO NOTICE THAT A  
REQUEST FOR A CRIMINAL PROTECTIVE  
ORDER IS GOING TO BE MADE

[A] Defendant is entitled at a minimum to some notice that a request for a criminal protective order was going to be made so he could prepare for the hearing, where the request was made at a pretrial hearing more than seven months after the alleged crimes, and defendant had appeared at other pretrial hearings where no such request was made.

Babalola v Superior Court (App. 2 Dist. 2011) 121 Cal. Rptr 3d 740, 192 Cal App. 4<sup>th</sup>

MOTION IN OPPOSITION TO CRIMINAL PROTECTIVE ORDER  
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1 948.

2 The protective order is being requested November 17, 2014, same day as  
3 arraignment. The prosecutor failed to provide notice of their intention to seek a  
4 protective order.  
5

6 II

7 A CRIMINAL PROTECTIVE ORDER  
8 MUST BE BASED ON A FINDING OF  
9 GOOD CAUSE TO BELIEVE AN ATTEMPT  
10 TO INTIMIDATE OR DISSUADE A VICTIM/WITNESS  
11 HAS OCCURRED OR IS LIKELY TO OCCUR

12 In cases not involving domestic violence, a criminal protective order must be  
13 based on a finding of good cause to believe an attempt to intimidate or dissuade a victim  
14 or witness has occurred or is reasonably likely to occur, which may be based on the  
15 underlying charges and the circumstances surrounding the commission of the charged  
16 offenses, but a mere finding of past harm to the victim or a witness is not sufficient.  
17 *Babalola v Superior Court* (App. 2 Dist. 2011) 121 Cal.Rptr.3d 740, 192 Cal.App.4<sup>th</sup>  
18 948.

19 This case does not involve "domestic violence", therefore any protective order  
20 must be issued after a finding of good cause.

21 The following is the procedural setting *Babalola*:

22 A summary of preliminary hearing testimony regarding defendant's alleged  
23 assaults on the alleged victims, the proximity of defendant's and victim's residences,  
24 and potential for "bad blood" between defendant and victims did not constitute good  
25 cause for issuance of a criminal protective order, where the assaults did not involve  
26 domestic violence and defendant himself had called the police to report the incident,  
27 absent evidence that defendant attempted to intimidate or dissuade his victims from  
28 testifying at trial or that there was any reasonable likelihood that intimidation or  
dissuasion or any other type of harm to victims would occur in the future. *Babalola v*  
*Superior Court* (App. 2 Dist. 2011) 121 Cal.Rptr.3d 740, 192 Cal.App.4<sup>th</sup> 948.

In our case, THOMAS POWERS is alleged to have assaulted MATTHEW

MOTION IN OPPOSITION TO CRIMINAL PROTECTIVE ORDER  
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1  
2 McCOOL on or about March 15, 2014 at Patrick Malloy's Bar in Hermosa Beach.  
3 THOMAS POWERS and THOMAS McCOOL are not family members or in a dating  
4 relationship.  
5

6 CONCLUSION

7 WAYNE SIMPSON prays this court terminate the criminal protective order and  
8 schedule a date and time for a formal hearing on the issuance of a criminal protective  
9 order.

10 Dated: November 17, 2014

11 Respectfully submitted,  
12 EBERHARDT | VILLANUEVA LLP

13 J. Nigel Villanueva  
14 Attorney for Defendant  
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